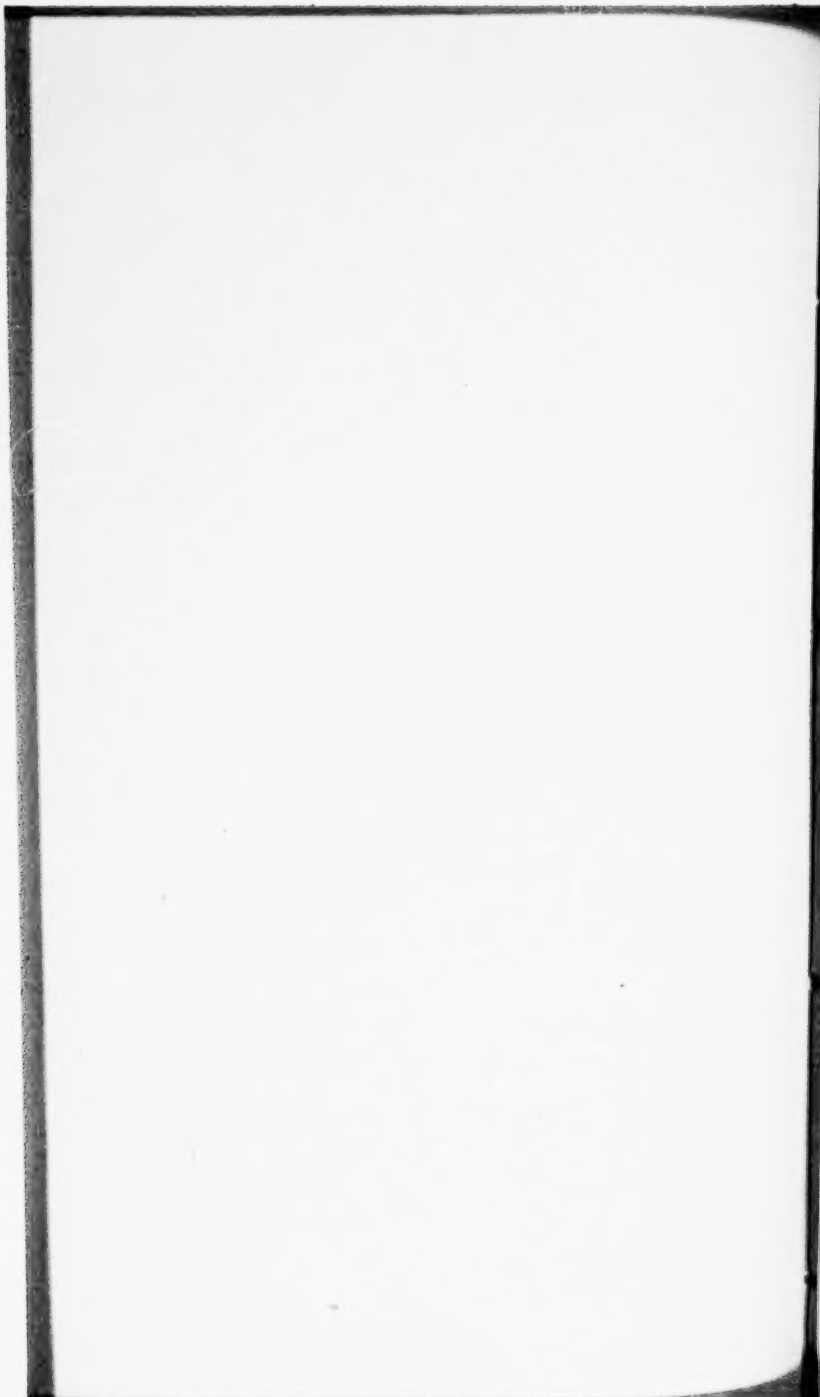

# In the Supreme Court of the United States.

OCTOBER TERM, 1905.

UNITED STATES OF AMERICA, APPELLANT,
*v.*
WILLIAM A. CLARK, APPELLEE.
No. 359.

## MOTION TO ADVANCE.

The Solicitor-General, on behalf of the United States, respectfully moves the court to advance this cause on the docket and to assign it for hearing at as early a date as the convenience of the court will permit.

### STATEMENT OF THE CASE.

On June 24, 1901, the United States filed its bill in the Circuit Court of the United States for the District of Montana against William A. Clark to obtain a decree annulling eighty-two patents issued subsequent to January 1, 1898, covering 11,480 acres of timber lands in the State of Montana, procured to be issued under the act of Congress of June 3, 1878 (20 Stat., 89), as amended August 4, 1892 (27 Stat., 348).

The bill charged that one Cobban and two other parties entered into a scheme fraudulently to obtain

timber lands from the Government by procuring persons to make entry of these lands under the act of Congress referred to, and then to convey them to Cobban; that in pursuance of this scheme they induced a large number of persons to take up lands, who, in order to secure final certificates, made false statements to the officers of the Land Office and filed false affidavits, with no intention upon their part of entering the lands for their own use, but for the purpose of sale to Cobban; that Cobban paid all the expenses of these entrymen, all fees, and the expenses and compensation of their witnesses, and after final proof paid the entrymen for their services; that after final proof had been made, and before patents had issued, Cobban entered into a contract with Clark to convey these lands to him, and in pursuance thereof obtained patents from the Government, in his own name, for the lands so fraudulently entered by the persons so referred to, and shortly thereafter conveyed them to Clark.

The bill charged Clark with knowledge, or with good reason to have had knowledge, of all these fraudulent acts at and prior to the time of his contract with Cobban to purchase, and the purchase of these lands.

To this bill Clark made answer; the Government replied; proofs were taken, and, on hearing, the Circuit Court dismissed the bill (125 Fed., 774). The Government took an appeal to the Circuit Court of Appeals, where the order of dismissal was affirmed (138 Fed., 294), Gilbert, circuit judge, dissenting. The Government then prosecuted its appeal to this court.

The principal question in this case is as to the proper construction of the clause "except in the hands of *bona fide* purchasers," in section 2 of the act of June 3, 1878 (20 Stat., 89), commonly known as the timber and stone act. The bill of complaint was filed on the authority of *Hawley* v. *Diller* (178 U. S., 476).

The Government contends that the rule therein announced, "that purchasers from any entryman before the issue of a patent are not *bona fide* purchasers, who are protected against the cancellation for fraud of the entryman, of an entry made under the stone and timber act," applies, notwithstanding the fact that, in ignorance of said frauds, the officers of the Land Department subsequently allowed a patent to issue, the Government claiming that the only effect of the issuing of a patent is to change the forum from the Interior Department to a Court of Equity having jurisdiction.

The lower courts held against this contention, and in substance adjudged that the legal effect of the issuing of the patent is to convert a prior innocent purchaser of an equity into a *bona fide* purchaser of the legal title, and to give him the same protection that would be accorded a man who buys the legal title after the patent has issued and in reliance thereon.

An early decision of this question is important for these reasons:

A similar suit is pending in the Circuit Court of the United States for the District of Montana against the appellee here and others, to cancel more than fifty pat-

ents issued for several thousand acres of lands fraudulently obtained by the persons and by the means employed to secure the patents involved in this case, and afterwards conveyed to Clark. To the bill in that case demurrers were overruled (129 Fed., 241). Recently motions in the nature of pleas in bar were filed in that suit, and sustained, the effect of which is to prohibit the Government from proceeding with the taking of any testimony showing the fraudulent acts by which the patents were obtained.

Many other similar cases are pending in the courts involving the same or similar questions, which ought to be prosecuted, but which, by reason of the construction placed upon the law by the courts, must remain in abeyance pending the determination of the question in this case.

Other frauds of a similar nature in which the same question is involved have been discovered, but the Government can not hope to accomplish anything while the judgment here remains unreversed.

Further, there are about eighty persons under indictment in Montana for perjury and subornation of perjury committed in fraudulently obtaining the lands the subject of this suit. One case has been tried, but because of the holding of the lower courts in this suit, the jury, upon the testimony and under the instruction of the trial court, were obliged to acquit. The Government can not reasonably hope for convictions with the adverse and, as it believes, erroneous construction placed upon the law in this case.

By reason of the character and age of many of the entrymen who are alleged to have procured lands for the appellee, there is danger that much valuable testimony will be lost if the decision of this court is postponed until the cause can regularly be reached.

The statutes of limitation which apply in actions to recover lands obtained by fraud as well as in criminal prosecutions, will soon cut off proper action by the United States in a number of cases.

For these reasons it is of great importance to the Government that this case should be advanced for argument at an early day.

HENRY M. HOYT,
*Solicitor-General.*

O